REMARKS

Claims 1 – 30 remain in the application and stand finally rejected. Claims 1 – 6, 8, 14, 17 and 20 – 30 are amended by this proposed amendment. Although this Response is being timely filed, the Commissioner is hereby authorized to charge any additional fees that may be required for this paper or credit any overpayment to Deposit Account No. 50-3818.

The "examiner should always look for enabled, allowable subject matter and communicate to applicant what that subject matter is at the earliest point possible in the prosecution of the application." MPEP 2164.04, last paragraph (emphasis original).

Claims 1 – 6, 8, 14, 17 and 20 – 30 are amended by this proposed amendment for clarity and to better recite the invention. In particular, the claims are amended to recite that the system/network is a communications system/network and more particularly that it may be a telecommunications system/network. This is supported by the specification, which provides that "FIG. 1 is a schematic diagram of a switching system for providing **telecommunication** services between end users … it is assumed that **communication** services are desired between two end users, at end points 120A and 120B, respectively." Page 7, lines 3 – 7 (emphasis added). This is further supported, more or less, by claims 9 ("voice-based communication services") and 10 ("video-based communication services"). No reference of record is directed to a communications system/network, much less teaches or suggests a communications or telecommunications system/network as recited in the claims as amended.

Further, claims 1, 25 and 29 are amended to reflect that the time for which traffic level is determined is current and whenever an end point requests service, not when the network congestion triggers it. This is supported by the specification at page 8, line 1 – 14, page 9, line 6 – page 10, line 2, and by claims 2 and 26. Claim 3 is amended to recite how the measurements are made periodically with the current measurement being provided in response to a service request. This is supported by the specification at page 13, line 23 – page 14, line 1. Claims 4 –

6, 14 and 20 – 30 are also amended to recite activity that may be conducted by the server. No new matter is added and none of this is shown by any reference of record. Entry of the amendment and independent consideration and allowance of the claims, as amended, is respectfully requested.

Claims 1, 3, 4 and 6 – 8 are finally rejected under 35 U.S.C. §102(e) as being unpatentable over published U.S. Patent application No. 2002/0126699 to Cloonan et al. Claims 2, 11 – 13, 18, 19, 22, 24 – 27 and 29 are finally rejected under 35 U.S.C. §103(a) as being unpatentable over Cloonan et al. in combination with published U.S. Patent application No. 2008/0031439 to Synnestvedt et al. Claims 9 and 10 are finally rejected under 35 U.S.C. §103(a) as being unpatentable over Cloonan et al. in combination with published U.S. Patent application No. 2002/0122387 to Ni U.S. Patent No. 6,978,144 to Choksi. Claims 5, 14 – 17, 23, 28 and 30 are finally rejected under 35 U.S.C. §103(a) as being unpatentable over Cloonan et al. and Synnestvedt et al. in further combination with Choksi.

Regarding the rejection of claims 8 and 9, the Final Office action (Final) relies on Ni to teach the voice and video services at paragraph 0019.

Ni teaches "a method for prioritizing packet flows within a switching network." Abstract, lines 2 – 3. However, Ni is specifically related to "high performance switching in a network system such as token ring, ATM, ethernet, fast ethernet, gigabit ethernet environments, LANs, WANs and other known data communication routing network systems." Paragraph 0001. Providing mp3s (voice) and mpegs (video), .e.g., for download, need not be concerned with the same QoS concerns as telecommunications. Therefore, neither Ni, nor any other reference of record is directed to a communications or telecommunications system/network as recited in claims 1 – 30, as amended by this proposed amendment. Accordingly, entry of the amendment, reconsideration and withdrawal of the final rejection of claims 1, 3, 4 and 6 – 8 under 35 U.S.C. §102(e) and claims 2, 5 and 9 – 30 under 35 U.S.C. §103(a) is respectfully requested.

The applicants thank the Examiner for efforts, both past and present, in examining the application. Believing the application to be in condition for allowance, both for the amendment

to the claims and for the reasons set forth above, the applicants respectfully request that the Examiner enter the amendment, reconsider and withdraw the final rejection of claims 1 – 30 under 35 U.S.C. §§102(e) and 103(a) and allow the application to issue.

As the applicants have previously noted, MPEP §706 "Rejection of Claims," subsection III, "PATENTABLE SUBJECT MATTER DISCLOSED BUT NOT CLAIMED" provides in pertinent part that

> If **the examiner** is satisfied after the search has been completed that patentable subject matter has been disclosed and the record indicates that the applicant intends to claim such subject matter, he or she **may note** in the Office action that **certain aspects or features** of the patentable invention have not been claimed and that if properly claimed such claims **may be given favorable consideration**.

(emphasis added.) The applicants believe that the written description of the present application is quite different than and not suggest by any reference of record. Accordingly, should the Examiner believe anything further may be required, the Examiner is requested to contact the undersigned attorney at the local telephone No. listed below for a telephonic or personal interview to discuss any other changes.

Respectfully submitted,

Date: Wednesday, December 31, 2008

By: /Charles W. Peterson, Jr. #34,406/
Charles W. Peterson, Jr.
Registration No. 34,406
Attorney for Applicants
Tel: 703-481-0532
Fax: 703-481-0585

SIEMENS CORPORATION
Customer No.: 28524
Intellectual Property Department
170 Wood Avenue South
Iselin, New Jersey 08830

Attn: Elsa Keller
Direct Dial: 1-732-321-3026